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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 57

GEORGE LEWIS DICKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion in the Court of Appeals (R. 122-143) is reported at 203 F. 2d 336.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1953 (R. 144). On March 28, 1953, the time for filing a petition for a writ of certiorari was extended to May 8, 1953, by order of Mr. Justice Douglas. The petition was filed on May 4, 1953 and granted on June 15, 1953. The jurisdiction of this Court is conferred by 28

U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the denial of petitioner's claim for exemption as a minister from military training and service had a basis in fact in accordance with the definition of the exemption in the Universal Military Training and Service Act.

2. Whether the local board's written summary of information presented orally by petitioner provides a basis for invalidating his classification.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Universal Military Training and Service Act and regulations issued thereunder are set forth in the Appendix, *infra*, pp. 67–71.

STATEMENT

Petitioner was charged, in a one-count indictment returned on August 3, 1951, in the United States District Court for the Northern District of California (R. 3–4), with refusal to submit to induction into the armed forces, in violation of Section 12 of the Universal Military Training and Service Act, then known as the Selective Service Act of 1948 (*infra*, p. 68). Petitioner waived a jury (R. 6) and, after trial, was found guilty by the court, and sentenced to two years' imprisonment (R. 25–26). On appeal, petitioner conceded his refusal to submit to induction, but contended

that there existed no basis in fact for the board's denial of his claim for exemption as a minister of religion and contended, further, that the local board's failure adequately to summarize his oral testimony in writing rendered his induction order illegal and void. The Court of Appeals for the Ninth Circuit affirmed the conviction (R. 122–143).

Petitioner's record with the selective service system may be summarized as follows:

Petitioner registered under the Selective Service Act of 1948 on September 15, 1948 (R. 33). On November 15, 1948, he was sent a classification questionnaire, which he executed and returned (Gov. Ex. 2). He was then 19 years of age (*Id.*, p. 6). In the questionnaire he stated, *inter alia*: "(a) I am a minister of religion. (b) I do regularly serve as a minister. (c) I have been a minister of the Jehovah's Witnesses since July 1, 1947. (d) I have not been formally ordained." (*Id.*, p. 3). He further stated, under "Present Occupation": "I am a minister and support myself by doing radio work at night," and, in the space calling for a description of his work, the following: "test tubes and repair radar (interrogator responder) equipment." He further stated, "I have worked ⅓ years in my present trade, and I do expect to continue indefinitely in it" (*Id.*, p. 4). He stated his employer to be "The United States Navy, San Francisco Naval Shipyard—Hunter's Point," and that the em-

ployment commenced on June 29, 1948, provided payment of $11.36 per day, and averaged 40 hours per week (*Id.*, pp. 4–5). He filled in the space for "Other business or work in which I am now engaged" with the word "Minister", for "Prior work experience" stated "2 years as Radio Mechanic", and for education beyond high school, listed (1) five semesters at Samuel Gompers Trades School, San Francisco, in radio construction, repair, and operation, (2) a First Class F. C. C. radio telephone operators license, (3) one year at San Francisco City College in electrical engineering, and (4) one semester at the same college, in radio engineering (*Id.*, pp. 5–6).

In the space in the questionnaire in which conscientious objection to war was to be indicated, petitioner first made and then struck out his signature (*Id.*, p. 7). He listed as a physical condition which would in his opinion disqualify him from service, "allergy to dust causing asthmatic attacks," alleging medical treatment therefor in November 1947 (*Id.*, p. 7). Finally, he stated that in his opinion his classification should be Class 4–D (exempt as a minister) (*Id.*, p. 7).

Attached to the questionnaire was a statement by petitioner to assist in his classification (Gov. Ex. 7; Gov. Ex. 11; R. 37–38). He asserted that he could show the following:

> * * * I, as my customary vocation, preach and teach the principles of a religious organization of which I am a mem-

ber and * * * I am not a person who irregularly or incidentally preaches and teaches the principles of such organization as a regular minister.

At the present time I conduct two meetings each week. Each meeting is on a definite day and at a definite hour at different meeting places and both last at least one hour each. At these meetings I conduct a study of the Holy Bible according to the doctrines of the Watchtower Bible and Tract Society. I spend a great deal of time preparing for these meetings and usually spend several hours each week contacting the public and teaching or preaching to interested people. I also attend other meetings for my own benefit where I occasionally give a short talk. Attached to this sheet is an affidavit with more information concerning the regularity of my ministry and declaring my recognition by the Watchtower Bible and Tract Society. * * * I am as a matter of fact a regular minister as defined in section 16 (g) of the Selective Service Act of 1948. * * * The work described in series VIII of the classification Questionnaire is done on the swing shift allowing me the time in the Lord's service.

Attached to the statement was an affidavit of one Archie R. Dewar, "Company Servant or presiding Minister of the Daly City Unit of Jehovah's Witnesses", stating:

> * * * According to our records [petitioner] has been proficient in carrying out his duties as a Minister of the Watchtower Society since July of 1947. The duties incurred are preaching publicly and from house to house with the Watchtower publications, and conducting home Bible studies, in accordance with the organization instructions of the Watchtower Society.
>
> [Petitioner] has been used by me to address the congregation of the Daly City Unit of Jehovah's Witnesses on many occasions.
>
> For these reasons I can with good cause certify that Mr. George Dickinson is a minister of the Watchtower Society.

Also attached to the statement were a brief letter of Margaret Busterna stating that petitioner "has been conducting a neighborhood Bible study and preaching the doctrines of the [society] at my home (59 Brighton Avenue) regularly every Thursday at 1:00 o'clock since last May", and a similar letter of Alga Egge concerning Tuesday meetings, without specifying the date when begun.

On July 31, 1950, petitioner was classified 1-A, available for military service (R. 34). On August 25, 1950, he wrote to the local board, requesting "reclassification" on the ground that subsequent to the filing of his questionnaire there had been "an important modification in [his] vocation" (Gov. Ex. 3; R. 34). A personal ap-

pearance was set for September 7, 1950 (Gov. Ex. 2, p. 8; R. 34).

On that date, petitioner appeared before the Board. Rose A. Brock, Selective Service coordinator, who was present at the meeting, made the following "notation concerning the personal appearance", or "minutes of the personal appearance * * * at the direction of the Board * * * showing what took place" in the registrants file (Gov. Ex. 4, R. 35-36, 96):

9/7/50

Dickinson

Public Bldg. where he preaches.

Has not been ordained.

Devotes his full time to the work of preaching.

Supports himself through this work.

Jehovah's Witness.

The file also contains an affidavit of O. David Easter, dated September 7, 1950, delivered to the board before the hearing, and stating, *inter alia* (Gov. Ex. 6; R. 37, 78):

> I, As a duly ordained minister supervising the work of the Watchtower Bible and Tract Society in that section of San Francisco known as the Sunset and Richmond Districts, here testify that I know [petitioner] to be officially in charge of our missionary work in a 5,400 square mile section of territory embracing parts of Fresno and Kings counties with headquarters in

> Coalinga, California, since January 3rd, 1950.
>
> Prior to his Coalinga, California appointment [petitioner] worked with me here in San Francisco devoting his full time to the ministry, being enrolled as a full-time pioneer minister by national headquarters as of August 1, 1949, and continuing as such in good standing until the present time.

The board held the case over until the following week (Gov. Ex. 3, p. 8) and thereupon, after reviewing the information, continued the I-A classification, by a 3-0 vote, and so notified petitioner on September 15, 1950 (Gov. Ex. 2, p. 8; R. 36).

By letter dated September 21, 1950, petitioner requested that his case be brought before the appeal board (Gov. Ex. 5; R. 36-37). He claimed exemption as one "who is recognized as a minister by a recognized religious organization and who preaches as his regular occupation and not merely occasionally or incidentally."

On February 5, 1951, after petitioner had been examined and found physically acceptable (Gov. Ex. 8; R. 38-39), his entire file was sent to the Appeal Board (Gov. Ex. 3, p. 8, and Gov. Ex. 9; R. 39), and that board, on February 19, 1951, classified petitioner I-A by unanimous vote (Gov. Ex. 2, p. 8, Gov. Ex. 9; R. 39-40).

Thereafter, on February 28, 1951, petitioner wrote to the National Director of the Selective

Service System, requesting an appeal to the President of the United States (Gov. Ex. 11; R. 41). In this letter petitioner stated, *inter alia*:

> * * * I am serving as a "pioneer" or full-time minister. I am also a "company servant" or overseer with the responsibility of helping other ministers to better perform their duties within a certain territory. * * *
>
> * * * * *
>
> September 15, I appeared before the board and explained to it that during the almost two years since I had filled out the questionnaire I had become a full-time officially appointed representative of Jehovah's Witnesses (August 1, 1949), and * * * had moved to my present address to assume "company servant" responsibilities (January 3, 1950).
>
> Briefly, my duties are to: (1) Devote at least 100 hours to active preaching per month, which does not count study time; (2) Look after distribution of "spiritual food" in a 5,400 square mile territory; (3) Train those new to the service of God in public preaching; (4) Plan, and act as chairman for as many as four meetings each week in our "Kingdom Hall", to which meetings the public is invited, and some of which meetings are widely advertised; (5) Start up and conduct home Bible studies with interested people; (6) Arrange for

> and deliver public Bible lectures which are one hour speeches. * * *
>
> * * * * * *
>
> * * * I am unpaid and support myself. * * *

Petitioner, under date of February 28, 1951, sent a copy of this letter to the local board for its files (Gov. Ex. 11). On April 10, 1951, at petitioner's request, the National Director of Selective Service appealed to the President from the I-A classification given petitioner by the Appeal Board (Gov. Ex. 13; R. 41-42). The National Selective Service Appeal Board, which acts on behalf of the President, thereupon, by unanimous action dated June 5, 1951, classified petitioner in class I-A (Gov. Ex. 14; R. 43).

On June 25, 1951, petitioner applied for and was issued a Form 150 to be filled in by conscientious objectors (Gov. Ex. 15; R. 45). He failed to return the form on its due date, July 1, and the local board, on the following day, July 2, mailed an induction notice to petitioner (Gov. Exs. 17 and 23; R. 47, 51-53). However, on the same day, the board received the completed form, in which petitioner claimed exemption from all military service (Gov. Ex. 16; R. 46-47), stating, *inter alia*, that he was not only opposed to participation in war in any form but "further conscientiously opposed to participation in noncombatant * * * service in the armed forces" (Gov. Ex. 16, p. 1); that:

> The lives of men may be taken by Jehovah's servants only when he so reveals it to be his purpose. The manner of ravishment must be the same as the Bible shows proper. To defend our ministry, selves, brothers and homes, force may be used, but only as much as is reasonably necessary to repel the assault.

With respect to his work for the Navy, petitioner said:

> [R]ight as this contributions to destruction may have been, it was contrary to my conscience. I therefore refused an offer for advancement and allowed myself to be "displaced" in April, 1949. Three months later I enrolled as a FULL-TIME minister, and was sent to Coalinga in Jan. 1950. * * * [Gov. Ex. 16, p. 2];

He further alleged that the Coalinga "company" of Witnesses maintains a "public meeting place called a 'Kingdom Hall'" where he "regularly conduct[s] public meetings, Bible studies, and teach[es] a ministry school" and that he specifically "addressed the congregation" on the subject of conscientious objection "many times, but in particular on March 11 and March 18, 1951" (Gov. Ex. 16, p. 2); that he attended the Theocratic Ministry church school from 1947 to date (Gov. Ex. 16, p. 2).

In response to the question in the form, "When, where, and how did you become a mem-

ber * * * ?", petitioner, by cross reference, answered:

> I have been preaching and teaching the Bible in accord with the Watchtower Bible and Tract Society, otherwise known as Jehovah's Witnesses, since 1947. All ministers associated with us are enrolled in a continuous course of training. * * * [Gov. Ex. 16, pp. 2, 3.]

Petitioner further stated, in the space for description of the nature of leader of his congregation, that "I am the 'company servant' or presiding minister", and "[a]s one of Jehovah's Witnesses I am ordained and am a company servant, School servant, and study-conductor" (Gov. Ex. 16, p. 3). On July 6, 1951, the local board wrote petitioner that it had received his completed conscientious objector form, and asked him to explain why he had scratched out his signature as to conscientious objection when he made out his questionnaire on December 10, 1948, and why he now made this claim (Gov. Ex. 19; R. 49). Under date of July 11, 1951, petitioner wrote, and in explanation said, *inter alia* (Gov. Ex. 22; R. 50):

> * * * At that time I was, as I am now, conscientiously opposed to combatant and noncombatant service, and I did sign as such. After I had signed in series XIV but before I mailed the form to you, I was accused of being a pacifist. Knowing that the Lord has used his people on several occasions in actual warfare and being con-

fused as to the exact difference between a pacifist and a conscientious objector, and not having time enough to straighten the matter out in my mind, I made the mistake of striking out my signature.

* * * * * *

I would have filed Form 150 much sooner if I had not been confident that the Local Board would recognize the validity of my claim for exemption as a minister of religion. The Chairman and the Board were so reasonable at my personal appearance that I left fully expecting to be classified IV-D. Perhaps if I had had a more cooperative attitude I would have saved for my claim of conscientious objector much sooner.

Attached to the letter was a copy of the Watch Tower Magazine, dated February 1, 1918, containing articles distinguishing position and conscientious objection (Def. Ex. A; R. 35-36). This magazine included the following:

* * * "Be not ye afraid of them: remember the Lord, who is great and terrible, and fight for your brethren, your sons, and your daughters, your wives, and your houses." From that on the builders carried on construction of the wall armed with spears, shields, bows, coats of mail, and swords girded at their side. The conspiracy was thus foiled. (Neh. 4:8-23 [Am. Standard Version]) God's cause was involved and the liberty of his people to worship him freely. That was why those Israelites had chosen to fight. It was not

for the glory and power of the Persian empire that they fought. They fought for their brethren who belonged to God's organization and who worshipped him. [p. 68.]

* * * * * *

* * * [Jehovah's Witnesses] are not against war between the nations, and they do not interfere with the war efforts of the nations nor with anyone who can conscientiously join in such efforts. They fight only when God commands them to do so, because then it is theocratic warfare. * * * [p. 70]

* * * What, then, are we to render to Caesar? Certainly not our lives, for we never did owe these to Caesar and they do not belong to him. * * * [p. 76]

It also contained the following statements with respect to the ministry:

* * * Jehovah God has made these Christian witnesses his ministers of the Kingdom gospel. In the United States of America the Selective Service Act of 1948 exempts ordained and regular ministers of the gospel from military obligations. But the officers charged with applying that Act allow the exemption only to those who are full-time ministers, and not to all the rest. But each one of Jehovah's witnesses has as his vocation the ministry and is a minister of the gospel, whether able to render full time or only part time. Not merely the full-time servants among them, but each and every one of Jehovah's witnesses is

under a vow of dedication, which involves "duties superior to those arising from any human relation." God's Word therefore appoints each and every one of them a minister of God and preacher of the Kingdom gospel; and citizens of the law of the land, while having a legal right to do so, have no Scriptural right to discriminate and limit ministry exemption only to some, while excluding others. * * * [p. 78]

* * * * * * *

* * * So now each and every witness who is under vow to Jehovah God through Christ must obey that prophetic command and fulfill his commission as an ordained minister of the good news of the Kingdom. There is no exemption to any consecrated minister. Those taking the lead among them must set the example * * *. The rank and file of Jehovah's witnesses, being also ministers of God, copy their faithful example and peaceably preach. [p. 79.]

On July 12, 1951, the Local Board reviewed petitioner's claim as a conscientious objector, but decided that a reopening of his classification was unwarranted (Gov. Ex. 2; R. 51–52). Petitioner does not now challenge the denial of his conscientious objector claim, and the facts relating to that claim are set forth only for their relationship to some aspects of the claim of exemption as a minister.

Petitioner was directed to report for induction on July 16, 1951, as previously ordered (Gov.

Ex. 23; R. 51). At the induction station on July 17, 1951, petitioner refused to submit himself for induction (Gov. Ex. 25; R. 52-54, 31).

At the trial, petitioner testified that he had been "a minister with Jehovah's Witnesses" since 1947, that he was "formally ordained as a minister" on April 10, 1949, and that he "enrolled as a full-time minister" in August 1949 (R. 57, 33). He further testified that all three members of the local board attended the hearing accorded him (R. 59), and that the hearing lasted "about an hour" (R. 60). The board's first question had been as to what education petitioner had had for the ministry, and he testified that he had replied as follows (R. 60-63):

> * * * I told him that Jehovah Witnesses conduct a school of their own called the Theocratic Ministry School, and that we send no minister forth without first giving him a very comprehensive education. The education is based upon the main textbook of Christians and that is the Holy Bible, such as I have here. * * *
>
> * * * * *
>
> * * * I further instructed the chairman that my education included delvings into other textbooks of Jehovah's Witnesses and that these textbooks took into such subjects as the history of the Bible, the history of Christianity, the history of religion, the geography of the Bible, the apology or explanation or the reasons for the authenticity

of the Bible, and all these things I was pointing out was so that we could be well grounded and able to teach to others. Then we are given also a course on how to construct sermons. * * * Jehovah Witnesses when they preach use reference materials. They have to be familiar with analytical concordances, large volumes, to familiarize themselves with the translation from the ancient language of the Bible. * * *

* * * * *

* * * [O]ur course covers not only the construction of a sermon but also the proper delivery of a sermon. * * * First of all Jehovah's Witnesses are assigned student talks. They are short discourses based on the Bible and * * * the student is counseled on how he is to deliver that talk. If he has bad speech, it is marked on a speech conduct sheet. So that, as I explained to him, a witness could study at home on these various subjects and prepare for his next assignment.

And then to further support the education of Jehovah's Witnesses I showed that they are given a practical experience calling on missionary assignments to various people's houses, and that an older, more mature Witness or preacher accompanies the new ones so that they can learn how it is done, how to call on persons and place literature with them, and that once that is done, how to call back on them and to stimulate that interest so they will want the knowledge

> of the Bible, and then to conduct with these persons Bible studies, and I explained to him that one of the major works of Jehovah's Witnesses is to conduct Bible studies with the people, to educate them in the Bible itself, the very foundation of Christianity.
>
> * * * * *
>
> * * [I]n the Bible the education of one of Jehovah's Witnesses is equal to, if not superior, than that that a person who was ordained in some other seminary would receive because we are not educated on the irrelevant things that they preach about; we are educated on the things that really count, the Bible itself, because that is what we teach from.

Petitioner further testified that he told the board that the change that he had referred to in his letter had been that, since the time of filing his questionnaire, he had "let [the Navy] job go, [he] had no further use for it, * * * about two months afterwards [he] took up the ministry as [his] principal vocation"; he had quit the Navy (R. 62, 94–95). At another portion of his testimony, petitioner testified that he told the board that the change since the questionnaire had been that he had been baptised (R. 64):

> I explained to him that unlike the organizations that he may have been familiar with, to Jehovah's Witnesses ordination is in the ceremony of baptism. It is not—

> baptism is not, to one of the Jehovah's Witnesses, a mere profession of faith, but it is his commission or ordination—the words are synonymous—to go forth and preach to others and teach the things that He Himself cherishes so much [R. 63].

Petitioner did not recall having specified to the board the dates of the termination of the Navy job or of the baptism (R. 63–64), but testified that he showed the chairman of the board, and the chairman read, three letters from the Watchtower Bible and Tract Society, Incorporated, respectively dated August 1, 1949, appointing petitioner as a full-time "Pioneer Minister," December 16, 1949, inquiring whether petitioner would accept an assignment in Coalinga as "officer over" a congregation, and January 3, 1950, notifying the Coalinga company of Jehovah's Witnesses that petitioner "had been appointed as their overseer" or "company servant" and "school servant." Petitioner wished to retain the letters and they were not left with the board files. The letters were therefore not admitted in evidence at the trial (R. 65, 70–72).[1]

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[1] The August 1, 1949 and January 3, 1950 letters (Def. Ex. B and D) both indicated that the incumbent's duties were outlined in the "Counsel on Theocratic Organization". That document was not offered in evidence. The pioneer appointment stated, *inter alia*:

"* * * The pioneer service is now your vocation, the work of prime importance in your life. If the need exists, it is entirely proper to do secular work from time to time, or regularly week after week, to obtain funds necessary to con-

Petitioner further testified that he told the board the following concerning the activities of a "full-time Pioneer-Publisher" (R. 64–65):

> * * * [A] full-time Pioneer-Publisher devotes 100 hours to the work of getting acquainted with people at their doors, leaving with them Bible literature, calling back on those placements of Bible literature, stimulating that interest, converting into it a home Bible study, using the Bible and the Watch Tower Society publications. Then further * * * their work also included street work. They offered to the people passing along the streets copy of the Watch Tower magazine * * *. It is just one of the means that we use to attract more interest to the important thing, God's word, the Bible. * * *
>
> * * * We are not trying to sell literature. We are trying to use literature to help others.

---

tinue in full-time service. But no secular work must ever overshadow your service as a minister, for as such you hold a most blessed position, which you should cherish and strive to retain in the preaching period still ahead.

* * * * *

"As a pioneer you are required to serve in the field * * * performing the ministry from house to house, by means of back-calls and Bible studies, in magazine work and in other ways, generally engaging in all features of the service. * * *" (Def. Ex. B).

The appointment also granted "[s]pecial literature rates" as distinguished from rates allowed "company publishers", who were not to be supplied literature by the pioneers at "pioneer rates" (Def. Ex. B).

With respect to the work engaged in at the time of the hearing, petitioner testified (R. 70–71):

> [The Chairman] said, "Do you preach in a church?" I answered, "Yes, I do," that Jehovah's Witnesses, I told him, maintain a hall in the main part of Coalinga, and that at this hall are conducted three meetings a week and sometimes four, and that it was my duty to preside at each one of those meetings each week. I arranged for them and delivered the discourses for most of them.

There was no other conversation "[on] the subject of [petitioner's] standing before the congregation as an ordained minister as do the Orthodox clergy" (R. 71), although petitioner testified, at another point, that he told the board in detail about his "work on the platform and preparing for discourses" (R. 76–77). Petitioner defined "Company Servant" as follows (R. 72):

> That is the name that the Society has given to the minister in the Company, in the group that meets together, that oversees the work of the others. The assignment—the territory assignment for the Coalinga company or congregation of Jehovah's Witnesses was 5,400 miles.
>
> * * * * *
>
> It was my duty to see that those missionaries that were associated with me and with the company had a proper distribution of the territory so that everyone in that entire 5,400 square miles district had the oppor-

> tunity to know about our work and to attend our meetings which were given for their benefit.
>
> * * * * *
>
> * * * [A]s a Pioneer my duties were to participate in that service with them. Then also I was appointed by the Society, as was shown by that Exhibit D, I believe, that I was the school servant for the company, that in this Theocratic Ministry School where Jehovah's Witnesses are taught about the Bible, the related subjects of history, that I was the one that counselled the students, gave them their assignments and instructed them to encourage them in improving their manner of speaking and manner of studying.

Petitioner testified that his "duties as a minister often involved contacting about 300 persons a month and spending 150 hours dedicated solely to the work of God, a 100 hours in the missionary work plus [50 hours] studying and giving discourses at the meetings" and "writing letters" (R. 73–74, 76–77, 89, 93). He stated that "[t]he door-to-door work is preaching" (R. 90) but denied that all Jehovah's witnesses did what he did (R. 89–90). He testified, however, that he had told the board (R. 92):

> * * * Jehovah's Witnesses are not organized as a church would be organized but * * * the word "Witness" means "testifier," and people that testify of Jehovah preach. Therefore Jehovah's Wit-

> nesses constitute a society of ministers, some working part time, some working full time. In my case it was full time, and none of Jehovah's Witnesses are called Jehovah's Witnesses unless they do preach. * * * If they irregularly or incidentally preach, they are not classified as Jehovah's Witnesses. * * * In other words, [I] told them that every member of Jehovah's Witnesses is a minister * * * [and] [t]herefore, entitled to [exemption] as such * * *."

Petitioner had not officiated at any wedding and had had no occasion to inquire as to how to obtain a California permit to perform marriages (R. 90–91).

Petitioner further told the board that no Jehovah's Witnesses in the United States were paid for their work and that he had supported himself by "about five hours a week" as a radio man, earning about $35 a month. Petitioner's explanation of his ability to live on $35 per month was on the basis of an apartment cost of $15 to $17.50 per month, doing his own cooking and laundry, and "being invited out to other people's houses and with a little assistance they would generously give me" (R. 74–75, 91, 93). At the trial, petitioner appeared "nicely" dressed and testified that he had been similarly dressed at the board hearing (R. 91).

Petitioner further testified that a board member had "thought" that a claim of a vocation in the ministry would require payment as a minister

(R. 75), and that the chairman had answered, "we sent 4,000 of you boys off to prison in the last war" (R. 78, 85).[2] However, petitioner testified that the chairman was not unfair, but "was very objective in everything that he did," raising his voice only in the particular statement (R. 85, 87–88). In closing, petitioner told the Board that the information that he regularly devoted his time to a recognized ministry:

> is contained in my affidavit that was submitted along with the questionnaire * * * [and] is also contained in the affidavits [etc] signed by C. D. Easter * * *. [R. 78]

Petitioner testified that on June 25, 1951, he looked through his selective service file at the local Board in search of a transcript of the hearing, and that he saw the summary of the hearing at that time (R. 45–46, 88–89; Gov. Ex. 15). On cross-examination as to why he had not brought any inaccuracies or inadequacies of the summary to the attention of the Board in his subsequent letter of July 11, 1951, he asserted:

> I didn't realize 'till Sunday night what the meaning of that slip was. I never read it thoroughly. * * * I wasn't looking for those notes. I was looking for the transcript, a thorough, word-for-word transcript of the whole thing. * * * [R. 88–89]

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[2] No such remark as that attributed to the chairman was recalled by the Board coordinator, Brock (R. 96–97).

SUMMARY OF ARGUMENT

I

The test of whether the Selective Service boards properly denied petitioner's claim for exemption as a minister from military training and service is whether there was a basis in fact for such action which is in accordance with the definition of the exemption in Sections 6 (g) and 16 (g) of the Selective Service Act of 1948, now known as the Universal Military Training and Service Act.

A. In the present Act, Congress continued in Section 6 (g) the exemption from military training and service of "regular or duly ordained ministers of religion" which appeared in the Selective Training and Service Act of 1940. However, in Section 16 (g) of the 1948 Act, Congress for the first time itself defined the terms "duly ordained minister of religion" and "regular minister of religion." Congress largely derived the new statutory definitions from the definitions of those terms in the regulations issued by the President under the 1940 Act. To that extent Congress ratified and approved the prior administration of the ministerial exemption under which it was accorded to certain persons who, while not ministers in the sense of being the spiritual and religious leaders of congregations, had nevertheless so devoted them-

selves to religious work as to set themselves apart from the ordinary members of the religious groups to which they belong.

However, in the new statutory exemptions, Congress added a new emphasis to the old administrative definitions, and it made clear its reason for doing so. In defining both "duly ordained minister" and "regular minister," Congress added the requirement that one seeking the ministerial exemption must prove that he carries on his ministry "regularly" and as "his customary vocation." The new definitions originated in the Senate, and the report of the Senate Committee on Armed Services (S. Rep. 1268, 80th Cong., 2d Sess., p. 18) states that:

> * * * Serious difficulties arose in the administration and enforcement of the 1940 act because of the claims by members of one particular faith that all of its members were ministers of religion. A minority of the Supreme Court thought that Congress intended to grant an exemption broad enough to include this group. (See the dissenting opinions in *Cox* v. *United States*, 332 U. S. 442, 455, 457.) In order that there may be no misunderstanding of the fact that the exemption granted is a narrow one, intended for the leaders of the various religious faiths and *not for the members generally*, the terms "regular or duly ordained ministers of religion" have been defined in section 16 (g). [Emphasis supplied.]

Considering both the prior application of the ministerial exception under the 1940 Act which Congress apparently approved, together with the one change which Congress made for a specific reason, it appears that Congress intended in Section 6 (g) of the Selective Service Act of 1948 to provide exemption from military service for (1) those members of a religious group who by their preaching and teaching, or by their withdrawal from secular life to devote themselves to religious works, are in either way genuinely set apart from the lay or ordinary members of their group, and (2) those members of a religious group who, although not thus sharply differentiated from their co-religionists, nevertheless preach and teach the religious principles of such group as their customary vocation to such an extent that they are in fact set aside and regarded as the religious leaders of *their* group.

B. The action of the local and appeal boards in denying petitioner's claim for exemption as a minister from military service is final and conclusive unless "there is no basis in fact for the classification which it gave the registrant." *Estep v. United States*, 327 U. S. 114, 122–123. In the instant case, there are undisputed facts and circumstances which constitute an ample "basis in fact" for petitioner's classification. In appraising petitioner's asserted role of religious leadership, the local board, which had the opportunity to see and hear the petitioner, was entitled to take

into consideration that when petitioner executed his classification questionnaire he was 19 years old and asserted that he had been a minister since he was 17, and was only 21 when he appeared before the board. Even absent opportunity for personal observation, the board could properly take into account that religious leadership is ordinarily (although not invariably) associated with a personal maturity rarely found in persons as young as petitioner. Similarly, the local board could take into account that in 1942, when petitioner claimed the ministry as his "customary vocation," he displayed confusion as to the compatibility of his Navy Yard employment with his religious principles, and as to whether he should claim exemption as a conscientious objector, which was in sharp contrast with the settled views on such matters that one would expect from a leader among Jehovah's Witnesses. Finally, the local board was advised by petitioner that all of Jehovah's Witnesses are ministers and entitled to exemption as such from military service. Faced with this claim, the local board could reasonably require (as Congress intended) a more specific showing of the respects in which petitioner's ministerial activities differed from those of Jehovah's Witnesses generally than would be required from a member of a religious group which had not obliterated distinctions between clergy and laymen.

Petitioner made no such affirmative and precise showing in support of his claim as would

require the local board as a matter of law to grant him the ministerial exemption. He never made it clear how his activities as a Pioneer minister differed in kind from those which he had carried on while he was employed by the Navy or from those carried on by Jehovah's Witnesses generally. He did nothing to negative the possibility that others in the Coolidge Company of Jehovah's Witnesses were acting as Pioneer ministers. His description of his duties as Company Servant of the Coolidge Company was also in general terms which failed to indicate the number of persons in the Company or whether significant administrative or leadership functions were being performed by other types of servants in that Company. In view of this lack of precision as to the extent to which petitioner's ministerial activities set him apart from Jehovah's Witnesses generally, the Selective Service local and appeal boards could reasonably deny his claim, taking into account his unusual youth and his apparent confusion as to matters on which one making such a claim would be expected to have definite and settled views.

II

Petitioner's contention that the local board prepared and inserted in his Selective Service file an inadequate summary of information which he presented orally to the local board, and that his classification is therefore invalid, is without merit.

A. The purpose of the summary required by Section 1604.3 of the Selective Service regulations is to place in the registrant's file for the use of appeal boards the content of any material information submitted by him and which is not otherwise in the file. In this case, the local board's summary, together with the written information furnished by petitioner in his classification questionnaire and otherwise, covered the sources of every item of material information which he claims was not included in the summary.

Even if the summary was deficient, petitioner cannot, in view of his failure to file a timely request for reopening, on appeal to the National Selective Service Appeal Board, on which he set forth his own summary of the information allegedly omitted by the local board from its summary, "The omission did not prejudice Dickinson before the National Selective Service Appeal Board." This is fatal to his objection, since the *de novo* determination of that Board, denying his claim, superseded the prior determinations of the local board and the state appeal board.

B. Again assuming, arguendo, that the local board's summary was inadequate, the Selective Service regulations expressly provided petitioner with an opportunity to obtain a correction of the summary when he appealed from the local board's determination. Under established principles, his failure to take advantage of this opportunity to obtain timely relief from procedural error should

preclude him from challenging the adequacy of the summary long afterward as a defense in a criminal prosecution for failure to be inducted. *United States v. Spector Trash Lines*, 355 U. S. 33, 37.

ARGUMENT

I

THERE WAS AMPLE BASIS IN FACT FOR DENYING PETITIONER'S CLAIM FOR EXEMPTION FROM MILITARY SERVICE AS A MINISTER OF RELIGION.

The actions of the local board, the appeal board, and the National Selective Service Appeal Board (which acts for the President) in denying petitioner's claim for exemption from military service pursuant to Section 6 (g) of the Universal Military Training and Service Act of 1948, had an ample basis in fact and correctly applied the statute.

A. THE ACT AUTHORIZES THE EXEMPTION OF REGULAR OR DULY ORDAINED MINISTERS, AND NOT OF PERSONS WHO ARE NOT SET APART BY THEIR RELIGIOUS ACTIVITIES FROM THE OTHER MEMBERS OF THEIR RELIGIOUS GROUP.

Section 6 (g) of the Selective Service Act of 1948 (now known as the Universal Military Training and Service Act) provides that "Regular or duly ordained ministers of religion, as defined in this title, * * * shall be exempt from training and service (but not from registration) under this title." The operative phrase "regular or duly ordained ministers" was used in both the Selective Service Law of 1917 and the Selective Training

and Service Act of 1950, but without statutory definition. However, the terms "duly ordained minister of religion" and "regular minister of religion" are respectively defined in Section 16 (g) of the 1950 Act as follows:

(1) The term "duly ordained minister of religion" means a person who has been ordained in accordance with the ceremonial, rites or usages of [illegible] religious sect or organization, and who, on the basis of his beliefs or lack of belief, doctrines and principles of a religious character, is recognized by such church, sect or organization and is engaged in administering the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of re-

ligion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

These statutory definitions, which had no counterpart in the Selective Training and Service Act of 1940, as distinguished from the regulations thereunder, have a history which is particularly relevant to this case.

Under the 1940 Act, the Selective Service System issued regulations containing the definitions which were before this Court in *Cox* v. *United States*, 332 U. S. 442, as follows:

Class IV-D: Minister of religion or divinity student.

(a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion * * *.

(b) A "regular minister of religion" is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recog-

nized by such church, sect, or organization as a minister.

(c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties.[4]

In the administration of the ministerial exemption under the 1940 Act and regulations, it has been concluded that "The determinations of this status by the Selective Service System have been generous in the extreme." *Selective Service in Wartime* (Second Report of the Director of Selective Service 1941–1942, p. 240).

Early in the administration of the 1940 Act, the Selective Service System encountered the contention of Jehovah's Witnesses that each of them is a minister and entitled to exemption as such from military training and service. While the System always rejected this sweeping claim, sincere efforts were made to identify those members of Jehovah's Witnesses who were in fact entitled to exemption as ministers. For a time during 1941–1942, the National Headquarters of the Selective Service System furnished to the local boards certified lists of (1) persons comprising the Bethel Family (Jehovah's Witnesses who

[4] C. F. R., 1941 Supp., Sec. 622.44.

were the office, factory and farm workers at the central organization of the Watchtower Bible and Tract Society, Inc., in New York City), and (2) "pioneers" who "devote all or substantially all of their time to the work of teaching the tenets of their religion and in the converting of others to their belief." The local boards were advised that the persons named in such lists might be granted the ministerial exemption. The local boards were further advised that the ministerial status of other Jehovah's Witnesses must be determined upon the facts of each case. See National Headquarters Opinion No. 14, and Opinion No. 14 (Amended) reproduced in the Appendix to petitioner's brief, pp. 7–14. As to such unlisted Witnesses, Opinion No. 14 (Amended) advised the local boards that:

> 5. The members of Jehovah's Witnesses, known by the various names of members of the Bethel Family, *pioneers*, regional servants, zone servants, *company servants*, sound servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. *The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree.* It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in

> the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, *whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.* [Italics supplied.]

In *Cox* v. *United States*, 332 U. S. 442, 450–451, this Court stated that Opinion No. 14 furnishes a proper guide to the interpretation of the Act and Regulations. In October 1942, the Director of the Selective Service System discontinued the practice of adding additional names to the list (App. to pet. for cert. pp. 18–20) and later the use of such lists was abandoned altogether. No such lists have been employed under the 1948 and 1951 Acts.

The determination of the ministerial status of Jehovah's Witnesses on a case to case basis gave rise to considerable litigation, culminating in this Court's decision in *Cox* v. *United States*, 332 U. S. 442, with four Justices dissenting, which in effect rejected the contention that all of Jehovah's Witnesses are entitled to exemption from military

service as ministers, notwithstanding the presentation of the same arguments which petitioner repeats in this case.

Less than a year after this Court's decision in *Cox v. United States*, *supra*, Congress considered and passed the Selective Service Act of 1948, which controls this case. The House bill (H. R. 6401, 80th Cong., 2d Sess.), as reported out of the Committee on Armed Services, simply repeated the exemption of the 1940 Act for "regular or duly ordained ministers of religion." The report of the House Committee only states that "This subsection is intended to include all brothers who have taken solemn vows to dedicate their lives to the service of God." H. Rep. 2961, 80th Cong., 2d Sess., pp. 10-11. On the floor of the House, there was adopted an amendment offered by Representative Kersten which would have broadened the companion exemption in section 6 (g) for theological and pre-theological students to include persons "who are recognized by the officials of their church or synagogue or sect as having given a definite and acknowledged intention of entering into full-time religious work * * *." The Kersten amendment was discussed as follows (94 Cong. Rec. 8677):

> Mr. KERSTEN of Wisconsin. Mr. Chairman, this amendment is largely by way of clarification. It pertains principally to those individuals of the Protestant or Jewish Church who are studying for and in-

tend to enter the ministry. I am a Catholic myself. Most people who enter into the studies for the priesthood in the Catholic Church enter into regular religious preparatory schools of instruction, but it is my understanding that many individuals who enter into the Protestant and Jewish ministry take a regular formal course such as any student might take and do not enter into the regular ministry until after they have completed their college education; but they take the college course with the view of entering the ministry and have made arrangements with their church leaders to that end. I think there will be something in the way of discrimination against people in that category if we do not adopt this amendment, discrimination against people who in good faith enter a regular college having made arrangements with their church superiors to enter into religion thereafter.

My amendment merely takes care of those who have made arrangements with officials of their church, synagogue, or sect to enter into the ministry. Under this amendment they would be exempt as are those who enter regular institutions.

Mr. KILDAY. Mr. Chairman, will the gentleman yield?

Mr. KRUSTEN of Wisconsin. I yield.

Mr. KILDAY. This amendment, of course, would make clear the fact that those who are in schools studying for the ministry would be exempt from the draft, but it

would also make clear that those in the Catholic religious orders, for instance, known as lay brothers, should also be exempt; and that has always been our intention, and it is now in this Selective Service Act that they should be exempt.

Mr. KERSTEN of Wisconsin. I thank the gentleman for his statement.

Mr. KERSTEN. I think the gentleman's amendment should be adopted.

The Senate bill (S. 2655, 80th Cong., 2d Sess.) as reported out of the Senate Committee on Armed Services, provided both the exemption for "regular or duly ordained ministers of religion" and the definition of those terms which now appear in Sections 6 (g) and 16 (g) of the 1948 Act. The accompanying report of the Senate Committee (S. Rep. 1268, 80th Cong., 2d Sess., p. 13) contains the following explanation:

Deferment of ministers and ministerial students.—Regular or duly ordained ministers of religion, and certain theological and pretheological students, are exempt from induction but not registration. This subsection parallels the 1940 act, except as regards pretheological students, who were not covered in the original statute. Serious difficulties arose in the administration and enforcement of the 1940 act because of the claims by members of one particular faith that all of its members were ministers of religion. A minority of the Supreme Court thought that Congress in-

tended to grant an exemption broad enough to include this group. (See the dissenting opinions in *Cox* v. *United States*, 332 U. S. 442, 455, 457.) In order that there may be no misunderstanding of the fact that the exemption granted is a narrow one, intended for the leaders of the various religious faiths and *not for the members generally*, the terms "regular or duly ordained ministers of religion" have been defined in section 16 (g). The definition is that which was contained in the 1917 Selective Service Regulations and which was successfully administered without the problems which arose under the 1940 act. [Emphasis supplied.]

The report of the Conference Committee (H. Rep. 2438, 80th Cong., 2d Sess., p. 43) justifies the adoption of the Senate proposal as follows:

> The Senate bill provided for the exemption from training and service of regular or duly ordained ministers of religion and of theological and pretheological students. The House amendment broadened this exemption to include Christian Science readers and practitioners and those persons who have been recognized by the officials of their church, synagogue, or sect as having given definite and acknowledged intention of entering into full-time religious work.[4]

[4] We do not understand this apparent characterization of the Kersten amendment adopted by the House of Representatives, which was described by its author as relating only to a certain class of students aspiring to the ministry.

> The conference agreement adopts the provisions of the Senate bill with respect to exemption of ministers and theological and pretheological students, for the reason that it was felt that to include any specific sect or religion by name in this provision would logically compel the inclusion of many others or, by interpretation, indicate that other such sects would be excluded were the original House provisions accepted.

There can be drawn from this legislative history of the 1948 Act only the conclusion that Congress was satisfied with the application of the ministerial exemption under the 1940 Act, with the one significant qualification that Congress was clearly and specifically determined to adopt and reinforce the position of the Selective Service System and of the majority of this Court in *Cox v. United States*, *supra*, that not all of Jehovah's Witnesses shall be exempted from military service as ministers.

In defining in Section 16 (g) of the 1948 Act the phrases "duly ordained minister of religion" and "regular minister of religion," Congress added one new element to the definitions set forth in the Regulations under the 1940 Act. That new element,* applicable to both "regular" and

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*This element was not, in fact, entirely new, since the administrative definitions of both "duly ordained" and "regular" ministers under the 1940 Act required that ministerial duties be performed "customarily."

"duly ordained" ministers, is that a minister, to be entitled to exemption as such from military service, must preach and teach the religious principles of his church *regularly* and "*as his customary vocation.*" And the report of the Senate Committee in which this requirement was developed leaves no doubt that its intended function was to preclude Jehovah's Witnesses from obtaining a mass ministerial exemption for all of its male members of military age, for, after reciting that "Serious difficulties arose in the administration and enforcement of the 1940 act because of the claims by members of one particular faith that all of its members were ministers of religion", the report explains the changes in the definitions as making it clear that "the exemption granted is a narrow one, intended for the leaders of the various religious faiths and not for the members generally."

We realize that Congress was not trying to impose a legal straitjacket upon the varieties of religious experience and organization which exist in the United States. This is apparent from the acquiescence of Congress in 1948 in the flexible administrative application of the ministerial exemption under the 1940 Act to such cases as the Catholic lay brothers, commissioned officers of the Salvation Army, and Lutheran and Seventh Day Adventist religious teachers. See National Headquarters, *Selective Service System*, State Director Advice No. 213-B (Appendix to Pet. br. pp.

30–36). Considering both this administrative interpretation and the language and history of the 1948 Act, we believe that Congress intended the ministerial exemption of Section 6 (g) to be available only to (1) those members of a religious group who by their preaching and teaching, or by their withdrawal from secular life to devote themselves to religious works, are in either way genuinely set apart from the lay or ordinary members of their group, and (2) those members of a religious group who, although not thus sharply differentiated from their coreligionists, nevertheless preach and teach the religious principles of such group as their customary vocation to such an extent that they are in fact set aside and regarded as the religious leaders of *their* group.

In the following portion of this brief, we show that there were facts and circumstances disclosed by petitioner to the local board which justified the denial of his claim for exemption as a minister under the definitions prescribed by Congress in the Act.

B. THERE WAS A BASIS IN FACT FOR THE DENIAL BY THE SELECTIVE SERVICE LOCAL AND APPEAL BOARDS OF PETITIONER'S CLAIM FOR EXEMPTION AS A MINISTER FROM MILITARY SERVICE

In *Estep* v. *United States*, 327 U. S. 114, 122–123, this Court defined the weight to be given to local board decisions in classifying registrants as follows:

> The provision making the decisions of the local boards "final" means to us that

> Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.

Accord, *Cox v. United States, supra.* In the instant case, there was clearly "a basis in fact" for the action of the local and appeal boards in denying petitioner's claim for exemption as a minister and in classifying him 1-A (available for military service).

We have no occasion to take issue with the petitioner's contentions that Jehovah's Witnesses are free to make ecclesiastical determinations as to the qualifications of their ministers and their methods of preaching, or to regard themselves as a society of ministers (Pet. br. 51-79). Under the Act, the Selective Service boards which considered petitioner's claim for a ministerial exemption were required to make a different determination, i. e., whether petitioner had shown that he performed the functions of a minister as defined in the Act. As pointed out above, the element of

"customary vocation" was added by Congress in 1948 for the express purpose of limiting the ministerial exemption to those members of a religious group whose religious activity clearly set them apart from the members generally.

In applying the statutory ministerial exemptions, the draft board was entitled to consider the extreme youth of the petitioner in appraising his asserted role of religious leadership. Petitioner was 19 years of age when, in November 1948, he executed the classification questionnaire in which he stated that "I have been a minister of Jehovah's Witnesses since July 1, 1947," at which time he was not over 18 years old (Gov. Ex. 2). He was still two months short of 21 years of age when he appeared before the local board in September 1950. Religious leadership is ordinarily associated with a maturity of experience and judgment rarely found in the "teens" or early twenties. We do not suggest that this is invariably so or that no person of petitioner's age is entitled to the ministerial exemption from military service provided by Section 6 (g). However, we think it is clear that a conscientious Selective Service board, confronted with a claim for ministerial deferment by one of extreme youth, must take that factor into consideration in weighing the accuracy of his claims of religious leadership.

Again, the Selective Service boards could hardly escape noticing petitioner's statement in

his classification questionnaire that on June 29, 1948, one year after the date on which he became a "minister of the Jehovah's Witnesses," he accepted employment averaging 40 hours per week with the United States Navy to "test tubes and repair valves (interrogator responder) equipment" (Gov. Ex. 2). The same questionnaire, in the space for statement of conscientious objection, discloses petitioner's signature stricken out after it had first been signed to the statement. There is no dispute as to the fact. Petitioner admits that he first signed the form and then deliberately struck out his signature (*supra*, p. 12). There also can be no misunderstanding of the language of the form; it required the statement in the case of each registrant who was actually a conscientious objector.[1] When petitioner appeared personally before the local board, he stated that he had ceased his Navy employment several months before August 1, 1949, when, he asserted, he became a full-time minister (R. 93). Nevertheless, considering that petitioner's Navy Yard work was indistinguishable from the duties of thousands of men in the armed forces, and in view of the well-known unwillingness of Jehovah's Wit-

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[1] The language of the questionnaire is as follows (Gov. Ex. 2, p. 7):

"INSTRUCTIONS.—Any registrant who * * * is conscientiously opposed to participation in war in any form *shall* sign the statement below requesting a Special Form * * *." [Italics supplied.]

means to perform even non-combatant military service, the local board and the appeal boards were entitled to weigh these circumstances in determining petitioner's claim for exemption as a minister. In the case of an ordinary young layman, we recognize the possibility of a progressive development of conscientious objections with respect to working on military materiel for the Navy. In such a case, also, one could similarly understand a young man's uncertainty and confusion as to whether to claim exemption as a conscientious objector in the classification questionnaire.* Here, however, the sharp inconsistency between petitioner's claim to be a minister, and therefore a leader (Pet. br. pp. 30–31), of Jehovah's Witnesses, and his faltering and confused position on matters of conscience which are admittedly of burning interest to Jehovah's Witnesses, was alone enough to cast serious doubt upon petitioner's claim of religious leadership among Jehovah's Witnesses.

In addition, and not least important, the local board and the appeal boards in this case were confronted with the claim that all of Jehovah's Witnesses are ministers and entitled as such to

*That this represented confusion on petitioner's part, rather than a mere mechanical error, was made clear later when, in seeking exemption as a conscientious objector after his claim for a ministerial exemption had been denied, petitioner addressed to his local board a letter containing the explanation quoted above, *supra*, p. 12.

exemption from military service. Thus, at his trial, petitioner testified that he had told the local board that:

> * * * Jehovah's Witnesses are not organized as a church would be organized but * * * the word "Witness" means "testifier," and people that testify of Jehovah preach. Therefore Jehovah's Witnesses constitute a society of ministers, some working part time, some working full time. In my case it was full time, and none of Jehovah's Witnesses are called Jehovah's Witnesses unless they do preach. * * * If they irregularly or incidentally preach, they are not classified as Jehovah's Witnesses. * * * In other words, [I] told them that every member of Jehovah's Witnesses is a minister * * * [and] [t]herefore, entitled to [exemptions] as such * * *.

The inevitable result of such a claim is to put the local board on notice of the strong possibility that the registrant is not performing ministerial duties as his customary vocation to such an extent as to set him apart from the religious group to which he belongs. In other words, a registrant claiming exemption as a minister of such a religious group inescapably must make a more precise showing that he is not merely an ordinary member of the group than would a registrant who belongs to a religious organization which draws a clearer line between their ministers and laity. This is not

even to suggest that Jehovah's Witnesses are in any way bound to adopt the ecclesiastical arrangements of other religious groups. But we do contend that since for their own reasons they have obligated that distinction in their own affairs by taking the position that they are all ministers, they cannot complain that as a result each of them who claims the ministerial exemption from military service must point out precisely and without ambiguity the respects in which his ministry is his customary vocation to the extent and in a manner that it sets him apart from ordinary Jehovah's Witnesses.

As opposed to the foregoing considerations, the local board was furnished the following information by the petitioner. In his original classification questionnaire, filed in 1948, petitioner stated that he had been "a minister of religion" since July 1, 1947, on which date he had not yet reached 18 years of age (*supra*, p. 3). He stated further that he "regularly" served as minister as his "customary vocation", although his explanation of means of support showed 40 hours of work per week on the swing shift as a radio technician for the Navy (*supra*, pp. 3–4). He stated, employing the precise language of the statute, that he was "not a person who irregularly or incidentally preaches and teaches", and that he "conduct[ed]" two "meetings" of one hour each week at different "meeting places" for Bible study, that he spent "a great deal of time preparing for these

meetings" and "usually spen[t] several hours each week contacting the public and teaching or preaching to interested people", and that he also attended other meetings for his "own benefit" and "occasionally" gave a "short talk" (*supra*, (pp. 4–5).

Two accompanying letters disclosed that the "meeting places" were private homes and asserted, in virtually identical language, that petitioner had been "conducting a neighborhood Bible study and preaching the doctrines." The letters gave no details as to attendance or other facts (*supra*, p. 6). An accompanying affidavit by a "company servant" stated that petitioner had been "preaching publicly and from house to house with the Watchtower publications, and conducting home Bible studies, in accordance with the organization instructions" and that petitioner had been used by him to "address the congregation of the Daly City Unit of Jehovah's Witnesses on many occasions" (*supra*, p. 6).

In this posture of the local board record, petitioner, on July 31, 1950, was classified I-A and on September 1950, made his personal appearance before the local board. At that time, petitioner stated that since the filing of his classification questionnaire he had ceased his Navy employment, and had become in August 1949, a "full time Pioneer minister" of Jehovah's Witnesses (R. 63). He also stated that he had become an "ordained"

minister of Jehovah's Witnesses by being baptized, apparently on April 10, 1949 (R. 63-64). The local board was further informed that in January 1950, the Watchtower Bible and Tract Society, Inc., had designated petitioner to be the "company servant" and the "school servant" of the Coalinga Company of Jehovah's Witnesses.

In the interest of accuracy, we will repeat again from petitioner's testimony in the District Court as to what he told the local board in his description of the essence of his duties in these various capacities. He stated that:

> * * * a full-time Pioneer-Publisher devotes 100 hours to the work of getting acquainted with people at their doors, leaving with them Bible literature, calling back on those placements of Bible literature, stimulating that interest, converting into it a home Bible study, using the Bible and the Watch Tower Society publications. Then further that their work also included street work. They offered to the people passing along the streets copy of the Watch Tower magazine, such as the one that was displayed and is in evidence now, and I explained to him that people are very often prone to take these magazines and become interested in that way. It is just one of the means that we use to attract more interest to the important thing, God's word, the Bible. * * *

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> * * * I told the Board that we do not merely peddle literature, but we call back on that literature so that we can encourage the person who has it to become interested in it. * * * [R. 64–65.]

In his brief, in this Court, petitioner appears to accept this statement of his Pioneer duties, unless the reference "preaching * * * publicly upon the streets" (Pet. br. p. 10) is intended to refer to oral preaching in the usual sense—a conclusion which finds no support on the record. The significant thing about petitioner's description of his Pioneer duties is that it fails to point out precisely how these activities differed from those carried on by Jehovah's Witnesses generally, or from those which petitioner himself had carried on in Daly City while he was employed by the Navy. There is not even an allegation that he was distinguished from the other members of the Coalinga Company in the amount of time which he devoted to such activities. Nor does it appear whether other members of the Coalinga Company are also classified as Pioneers.

As to his duties, as "overseer" or "Company Servant" of the Coalinga Company, petitioner testified that he had told the local board that:

> It was my duty to see that those missionaries that were associated with me and with the company had a proper distribution of the territory so that everyone in that entire 5,400 square miles district had the oppor-

> tunity to know about our work and to attend our meetings which were given for their benefit. [R. 72.]—

This description is confirmed by the affidavit of C. David Easter, which was the only written evidence of his Company Servant duties which petitioner submitted to his local board (*supra*, p. 7). In addition, petitioner testified that he had told the local board that:

> Jehovah's Witnesses, I told him, maintain a hall in the main part of Coalinga, and that at this hall are conducted three meetings a week and sometimes four, and that it was my duty to preside at each one of those meetings each week. I arranged for them and delivered the discourses for most of them. [R. 71.]

Petitioner admits that his Company Servant duties were part-time, largely administrative, and would not alone entitle him to be classified as a minister (Pet. br. pp. 78–80). More important, the administrative duties are nowhere defined with precision, and his "discourses" delivered in the Coalinga Kingdom Hall were in no way distinguished from the talks given by other Witnesses, such as petitioner himself had given in the Daly City Unit while he was still employed by the Navy (*supra*, p. 6). Moreover, there was no showing as to how many Jehovah's Witnesses are in the Coalinga Company, or as to whether other members of the Company are performing reli-

gious functions which might support other claims to the ministerial exemption.

Finally, petitioner testified that he told the local board that:

> * * * I was the school servant for the company, that in this Theocratic Ministry School where Jehovah's Witnesses are taught about the Bible, the related subjects of history, that I was the one that counselled the students, gave them their assignments and instructed them to encourage them in improving their manner of speaking and manner of studying. [R. 72.]

The local board could readily conclude from petitioner's description of his own training in the Theocratic Ministry School (R. 59–62) that the School consisted of relatively brief home study of the Bible and public speaking plus instruction in the distribution of religious literature. No information was given as to how many students were enrolled in the School or as to how much time petitioner devoted to it. The local board was entitled to give no weight to this element, and the petitioner also places no reliance upon it.

In brief, petitioner told the local board that he was a full-time minister of Jehovah's Witnesses and that he had given up secular employment except for part-time radio repair work yielding $35 a month, on which, plus assistance from other Witnesses, he supported himself. He described his duties as a full-time Pioneer minister or pub-

lisher in terms which amounted to a continuation of the same kind of activities as he had carried on in Daly City, when he was regularly employed by the Navy. He also described his additional duties as company servant of the Coalinga Company of Jehovah's Witnesses. His duties as both Pioneer and company servant were described in general terms which left unsaid such pertinent matters as the number of Jehovah's Witnesses in the Coalinga Company, whether others in that area also served as Pioneers, or the leadership functions performed by other types of servants in the Coalinga Company. More broadly, there was no precise showing that petitioner's ministerial activities were definitely distinguishable in some substantial respect from those performed by the other members of his congregation or company or by Jehovah's Witnesses generally.

Under these circumstances, the local board and appeal boards were under no compulsion to accept as true petitioner's claim that he was a full-time minister, in view of petitioner's extreme youth, his obvious confusion or indifference with respect to his Navy employment and conscientious objection, matters on which a leader of Jehovah's Witnesses would be expected to have settled convictions, and the claim that all of Jehovah's Witnesses are entitled to the ministerial exemption. Here, as in *Cox* v. *United States,* 332 U. S. 442, 451, "The board might have reasonably held that

nothing less than definite evidence of his full devotion of his available time to religious leadership would suffice under these circumstances." But even more decisive under the 1948 Act, from these same circumstances the local board could reasonably have concluded that petitioner did not pursue his ministry as his "customary vocation" to an extent that would set him apart from Jehovah's Witnesses generally.

II

THE LOCAL BOARD'S SUMMARY OF INFORMATION PRESENTED ORALLY BY PETITIONER AFFORDS NO BASIS FOR INVALIDATING HIS CLASSIFICATION

Petitioner complains that his classification was invalid in that the local board failed to provide as required by Section 1624.2 of the Selective Service Regulations (*infra*, p. 70) an adequate written summary of additional oral information which petitioner presented to the local board at his personal appearance before the board. We contend, to the contrary, (1) that the local board's summary was adequate, and (2) that the Selective Service Regulation, in providing a registrant desiring to appeal from his local board's decision with an opportunity to bring about a timely correction of such a local board summary, imposes upon him a duty to exhaust this opportunity before he can challenge the adequacy of the summary by way of defense in a criminal prosecution based upon his refusal to be inducted.

A. THE LOCAL BOARD INSERTED IN PETITIONER'S SELECTIVE SERVICE FILE AN ADEQUATE SUMMARY OF THE INFORMATION SUBMITTED ORALLY BY PETITIONER AND NOT ALREADY IN THE RECORD

Section 1624.2 of the Selective Service Regulations (*infra*, p. 70) provides that when a registrant makes his personal appearance before his local board:

> The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing, and, in either event, shall be placed in the registrant's file.

As petitioner states (Pet. br. pp. 103–104), the purpose of this requirement of a written summary of a registrant's oral statements to the local board is to supply the Selective Service appeal boards with the factual basis of the local board's decision as the basis for their own *de novo* determinations in the event of an appeal. The local board is not required to make a verbatim transcript of a registrant's oral statements, but, rather, a summary. And this summary is required of what does not already appear in the record; it is not required to repeat information which the registrant has presented to the board in writing to become a part of his file. As a summary, it need include only material facts—facts the omission of which prejudices the regis-

trant in the event he takes an appeal from the local board's decision. *Cramer* v. *France*, 148 F. 2d 801 (C. A. 9); *Niznik* v. *United States*, 173 F. 2d 328, 332–334 (C. A. 6), certiorari denied, 337 U. S. 925.

In this case, after petitioner's personal appearance before his local board, the local board inserted in his file the following summary of information submitted to it orally by petitioner:

> Dickinson. Public building where he preaches. Has not been ordained. Devotes his full time to the work of preaching. Supports himself through this work. Jehovah's Witness. (*Supra*, p. 7.)

Petitioner challenges the adequacy of this summary on the ground that when he appeared personally before his local board, "He gave new and additional testimony over and above the evidence appearing in the written parts of his file in reference to (1) his quitting secular work, (2) his having a congregation and presiding over it, (3) his fulltime ministry, (4) his devoting only five hours per week to secular work, (5) his training for the ministry, (6) his pursuit of the ministry as his vocation, (7) other factors and issues not involved in the written material" (Pet. br. p. 105). Leaving aside petitioner's last catch-all complaint, his six specific objections to the local board's summary are without substance.

With respect to complaints 1, 3 and 4, the local board's summary stated "Public Bldg. where he

preaches. * * * Devotes his full time to work of preaching. Supports himself through this work." (R. 36.) This portion not only reflected faithfully petitioner's oral statements that he had quit secular work and was engaged in a full-time ministry, but was unduly favorable to him in concluding that he supported himself on an income received from his ministerial work, rather than largely, as he asserts, from his earnings from five hours per week of secular work.

The affidavit of C. David Easter, which petitioner submitted to the local board in advance of his personal appearance, not only refers to petitioner as a full-time minister, but also disposes of his complaint No. 2 by describing his assignment to the Coalinga congregation or company (*supra*, p. 7) in almost the exact words which petitioner allegedly used in his personal appearance (R. 72).

The gist of complaint No. 5 is that the local board's summary failed to reflect petitioner's statement as to his training in the Theocratic Ministry School. However, such information was irrelevant in determining whether petitioner was entitled to a ministerial exemption, in the absence of either claim or proof that this training differed in any respect from that given to all or many other Jehovah's Witnesses—just as petitioner testified that he was conducting a Theocratic Ministry School in the Coalinga congregation (R. 72).

Petitioner's complaint No. 6, that the summary failed to reflect "his pursuit of the ministry as his vocation," is equally without substance. In petitioner's classification questionnaire, he asserted that "I, as my customary vocation, preach and teach * * *." The summary need not repeat or summarize information submitted in writing by a registrant.

Petitioner may be also suggesting (Pet. br. p. 105) that the summary was incomplete in failing to refer to his ordination by baptism. This matter would seem to be immaterial in that petitioner claimed to be a minister both before and after his baptism in 1949, and irrelevant in determining whether, as either a "regular" or "duly ordained" minister, he carried on his ministry as his "customary vocation." Moreover, in petitioner's letter of February 28, 1951, addressed to the National Director of the Selective Service System (*supra*, pp. 8–9), requesting an appeal to the National Appeal Board, petitioner summarized his own career in the ministry and, significantly, omitted all reference to his baptism or ordination.

Petitioner has failed to show that the local board's summary of his oral statements failed to reflect adequately any material item of information which was not otherwise included in the selective service file, which file was the basis for the determinations of the local and appeal boards. Moreover, even if the local board's summary is

regarded as inadequate, it was cured in this case in that, as noted by the court below, "On February 28, 1951, in connection with his request for appeal before the national appeal board, appellant addressed a letter to General Hershey, Director of National Selective Service, in which he set out at length his claim as to his occupation, with a review of his local board record including a very complete statement of the additional information he says was furnished to the local board at the time of his personal appearance." (R. 132.) And see pp. 8–9, *supra*. Thereafter, the National Selective Service Appeals Board also denied petitioner's claim to the ministerial exemption. Petitioner concedes that "the omission [from the local board's summary] did not prejudice Dickinson before the National Selective Service Appeal Board" but he insists that "it did harm him before the district appeal board" (Pet. br. p. 108). The objection is without substance. The *de novo* determination of the National Selective Service Appeal Board completely superseded the prior determinations of the local board and the appeal board, for the National Board exercises for the President his power under Section 10 (b) (3) "upon appeal or upon his own motion" "to determine all claims or questions with respect to inclusion for, or exemption or deferment from training or service under this title." 32 C. F. R. (1950 Supp.) 1604.6. And see *Boyles* v. *United States*, 319 U. S. 33.

B. THE SELECTIVE SERVICE REGULATIONS REQUIRE A REGISTRANT WHO APPEALS FROM HIS LOCAL BOARD'S DECISION TO POINT OUT ANY DEFICIENCIES IN THE LOCAL BOARD'S SUMMARY OF ORAL INFORMATION SUPPLIED BY HIM

Even assuming, *arguendo*, that the local board's summary was inadequate in some material respect, it does not follow that the action of the local and appeal boards was rendered invalid. For the Selective Service regulations provided registrant with an opportunity and therefore, we contend, a duty to point out and bring about the correction of any deficiencies in the summary at the beginning of the appellate process within the Selective Service System.

Section 1606.32 (a) (1) of the regulations provides that information contained in records in a registrant's file may be examined by the registrant or his authorized representative. Section 1626.12, which is a part of the regulations governing appeals, provides that:

> The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or to give sufficient weight, *and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.* [Emphasis supplied.]

The notice of appeal, together with the statement referred to in Section 1626.12, must be filed with

the local board (Section 1626.11), which is directed by Section 1626.13 to "carefully check the registrant's file to make certain that all steps required by the regulations in this chapter have been taken and that the record is complete". When the registrant's file, including the notice of appeal and the statement referred to above, is received by the appeal board, Section 1626.23 provides that as a "preliminary review":

> The appeal board will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the appeal board to determine the classification of the registrant, the appeal board shall return the file to the local board with a request for additional information or action.

Thus, the regulations provide a registrant with a full opportunity to ascertain whether the local board has prepared and placed in his file an adequate record of information which he supplied only orally, and to point out to the local board before or at the time he takes an appeal, and to the appeal board, any deficiencies in the summary; both the local board and the appeal board are empowered to take corrective action.

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The petitioner failed to take advantage of this procedure for correction of the local board's summary. Under established principles of administrative procedure, we submit that his failure to challenge the summary at a time when correction could have been made readily and promptly by the Selective Service boards through an adequate procedure provided for that purpose, precludes him from doing so long afterward by way of defense in a criminal prosecution for failure to be inducted. *United States* v. *Tucker Truck Lines*, 344 U. S. 33, 37. It is true that lower Federal courts have held to the contrary, stating that "The regulation confers a privilege but does not impose a duty upon the registrant; for it cannot be supposed that Congress intended to deal with registrants as if they were engaged in formal litigation, assisted by counsel, and therefore charged with the obligation to examine and approve a record on appeal." *Smith* v. *United States*, 157 F. 2d 176, 183 (C. A. 4); *Niznik* v. *United States*, 173 F. 2d 328, 334 (C. A. 6), certiorari denied, 337 U. S. 925. But cf. *Davis* v. *United States*, 203 F. 2d 853 (C. A. 8), certiorari denied, 345 U. S. 996.

We submit that that view overlooks important factors. First, the local boards, too, are composed largely of non-lawyers, and are entitled to the benefit of any procedures which will protect their decisions against unnecessary invalidation. Secondly, the fact that Congress has pro-

vided a uniquely decentralized system of administration for selective service, with a heavy emphasis upon the role of the local boards, provides a more compelling reason than exists in the case of more centralized administrative agencies for insisting that every opportunity for prompt correction of local board errors be exhausted. Finally, a serious practical problem is created when, in the criminal trial for violation of the Act, a registrant is permitted to testify in great detail as to the information which he furnished orally to his local board—for the purpose of showing that the board made an inadequate summary of such information. Because of the lapse of time, during which the local board will have heard and considered many other registrants' cases, its members, even if called as witnesses, can rarely remember in any detail what they were told by a particular registrant. The resulting uncontradicted testimony of a registrant is allowed to impeach a summary which he failed to challenge at a time when deficiencies could be corrected readily. We contend that the integrity of local board proceedings can be maintained only by insisting that registrants utilize the procedure which the regulations provide for the correction of alleged deficiencies in local board summaries.*

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* In December 1952, Section 1624.2 of the regulations was amended to place upon the registrant the burden of preparing the written summary of any oral information which he presents to the local board. 32 C. F. R. (1952 Cum. Supp.)

In the instant case, therefore, we submit that the local board's summary of petitioner's oral statements provides no basis for upsetting his classification for the reasons that (1) the summary was adequate, (2) if it was not adequate, it was cured by the action of the National Board in classifying him *de novo*, and (3) petitioner failed to exhaust the appropriate administrative procedure for correcting alleged deficiencies in the local board's summary.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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1624.2. While this change will solve the problem for cases arising thereafter, it has no application to the many active cases arising before December 1952. As to the older cases, however, we can see no reason why the same problem may not be met in a different way by applying established legal principles.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Universal Military Training and Service Act, 62 Stat. 604:

Section 6 (g) [50 U. S. C. App., Supp. V, 456 (g)]:

> Regular or duly ordained ministers of religion, as defined in this title * * * shall be exempt from training and service (but not from registration) under this title.

Section 16 (g) [50 U. S. C. App., Supp. V, 466 (g)]:

> (1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.
>
> (2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, with-

out having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

Section 12 (a) [50 U. S. C. App., Supp V, 462 (a)]:

* * * Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Selective Service Regulations, Title 32, C. F. R. (1949 ed.):

Section 1606.32:

Availability and use of confidential records and information. (a) Information

contained in records in a registrant's file may be disclosed or furnished to, or examined by, the following persons, namely:

(1) The registrant, or any person having written authority from the registrant.

* * * * *

Section 1622.19:

CLASS IV-D: MINISTER OF RELIGION OR DIVINITY STUDENT.—(a) In Class IV-D shall be placed any registrant:

(1) Who is a regular minister of religion;

(2) Who is a duly ordained minister of religion;

* * * * *

Section 1623.1:

* * * * *

(b) The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file; * * * Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances shall the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file. None of the provisions of this section shall impair the power of the local board to take notice of the birthday of any registrant and of the fact that the Congress has made registrants of his age liable for induction for military service and in the absence of any other information, when the registrant has failed to

furnish such information within the time prescribed, to classify the registrant as available for military service.

Section 1624.2:

* * * * *

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. * * *

* * * * *

Section 1626.12:

Statement of person appealing. The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or to give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

Section 1626.13:

Local board to prepare appeal record and forward file. (a) Immediately upon an appeal being taken to the appeal board by

a person entitled to appeal, the local board shall prepare the Individual Appeal Record (SSS Form No. 120) in duplicate, attaching the original to the inside of the registrant's Cover Sheet (SSS Form No. 101) and placing the duplicate copy in the local board files. The local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and that the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts.

* * * * *

Section 1626.23:

Preliminary review. The appeal board will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the appeal board to determine the classification of the registrant, the appeal board shall return the file to the local board with a request for additional information or action.

U. S. GOVERNMENT PRINTING OFFICE: 1969